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SUBJECT: CAMBODIA'S ECCC STUMBLES AND STALLS

11. (U) Summary. During the ECCC judges' plenary session from November 20-25, international and Cambodian judges were sharply divided over issues concerning the primacy of Cambodian law versus international law. News about the impasse leaked out and appeared on the Internet. Running parallel to the plenary session was the Cambodian Bar Association's announcement to members that the ECCC draft rules were illegal and the upcoming International Bar Association training for defense attorneys (sponsored by the ECCC Defender's Office) was also illegal; the IBA canceled the scheduled training and called the CBA's actions "disturbing." The plenary ended with both sides acknowledging that approval of the rules within a one-week timeframe was overly optimistic, and another plenary will be held at an unspecified date in the future. In the meantime, an expanded rules committee will attempt to bridge the differences. End Summary.

Plenary Session Ends Without Results

12. (SBU) The Extraordinary Chambers in the Courts of Cambodia (ECCC) convened international and Cambodian judges from November 20-25 to discuss and finalize the ECCC's draft internal rules and procedures that had been distributed in early November for internal as well as public comment. In the week leading up to the plenary, international organizations and Cambodian civil society were furiously working on submissions to the Tribunal in advance of the plenary session. At the end of the first day, one judge reported to us that the session had been "disappointing," noting that an earlier decision in July regarding who would vote on the rules was once again debated. By November 22, ECCC officials and observers reported a rising schism between the international judges and their Cambodian counterparts regarding the application of international or Cambodian law. International judges insisted that there were many areas where the ECCC would need to adhere to international law in order to meet international legal standards. The Cambodian judges reportedly countered that Cambodian law should have primacy given the court's placement within the Cambodian legal system. Discussions reached an impasse late on the 22nd, with the international judges reportedly agreeing on a joint letter to the Cambodian side saying that if the Cambodian judges would not agree to international standards, the UN and the international community should consider withdrawing support. The contents of the letter, which was not to be made public, were leaked and have appeared on at least one legal blog site.

¶3. (SBU) The remainder of the week did not result in any breakthroughs, and no date was set for the next plenary, although January as well as February 2007 were proposed. The judges agreed on an expanded version of the drafting committee to try and resolve outstanding issues in the interim. The committee reportedly includes Prak Kimsan, Mong Monichariya, You Bun Long, Kong Srim, and Sin Rith. For the international judges, it includes Marcel Lemonde, Sylvia Cartwright, Claudia Fenz, and Agnieszka Klonowiecka-Milart. The ECCC cancelled a scheduled joint press conference for Saturday, November 25; a joint press statement was released that acknowledged the challenge of approving 82 pages of rules encompassing all aspects of the ECCC's work in such a short period of time.

¶4. (SBU) The Embassy heard from several sources throughout the week regarding the growing division between the international and Cambodian judges, as well as the alleged letter. One source noted the one-week period for agreeing on the ECCC rules and procedures was too optimistic, and the outcome more disappointing as a result. The July plenary session and training program introducing the Cambodian and international judges had been a great success and a good working rapport established at the time; however, the reality of bridging the educational and experience gap between two sides is now apparent and will need to be worked through. Separately, ECCC spokesperson Peter Foster allegedly told one NGO that the Cambodian judges did not have adequate time to sort through the rules and simply fell back on a unified position of defending Cambodian legal sovereignty. Similarly, another international observer offered that the Cambodian judges were ill prepared to engage in a legal debate with their international counterparts on the question

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of when to apply international law versus Cambodian law, and therefore argued in favor of Cambodian law as a fail-safe strategy. One Japanese Embassy official applauded the Cambodian side for standing up to the international side and making a spirited case for adherence to Cambodian law.

¶5. (SBU) Another school of thought holds that the Cambodian judges responded to political pressure to block forward progress as the Prosecutor's office had indicated it was prepared to issue arrest warrants and start to pass cases to the investigating judge in December. We have heard from one source within the ECCC that even the optimists among the internationals working on the ECCC have sobered to the political realities of Cambodia, and question if the RGC has the political will to see through the process. Press reports on November 28 indicate that former Khmer Rouge soldiers and their families have shrugged their shoulders at the lack of progress over the past week, and see it as an encouraging indication that the court will be unable to fulfill its mandate.

Meanwhile, CBA Gets into the Act
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¶6. (U) Also during the week of the plenary, the Cambodian Bar Association president Ky Tech publicly denounced the draft ECCC rules as illegal under Cambodian law, with particular reference to the Defenders Office led by Rupert Skilbeck. Ky Tech noted that only Cambodian lawyers were legally qualified to defend anyone indicted by the ECCC, and denounced the International Bar Association's scheduled training for prospective defense attorneys sponsored by Skilbeck's office. The CBA president said that unspecified punitive actions would be taken against any Cambodian lawyer who attended the IBA training; the IBA subsequently cancelled the training and issued a strongly worded statement characterizing the CBA's actions as an obstacle to the work of the ECCC. The Ambassador responded to press inquiries, noting that the CBA's statements were unhelpful and a cause for concern. (Note: Skilbeck early on recognized that the

CBA was a force to be reckoned with in establishing a good relationship between his office and the Cambodian legal community. He has reached out to the CBA since his arrival to try and develop a productive relationship and to maintain good lines of communication. End note.) One NGO source speculated that Skilbeck's budget of USD 4.8 million was likely the overriding reason for the CBA's strong interest in the ECCC, and that Ky Tech is seeking a greater role for the CBA in order to profit from the ECCC's work.

Comment

17. (SBU) The past week was a difficult one for the ECCC, and it is one that may not be easy from which to recover. Most sources agree that if the next plenary session does not see results, some international personnel are likely to consider quitting their positions. While we do not want to give too much credence either to the views of the optimists or the pessimists as to the reasoning behind the failure of the judges to reach consensus, the upshot is that the ECCC's progress has stalled and its early momentum stymied. The Japanese Ambassador planned to meet on November 23 with DPM Sok An; we are seeing the Japanese Ambassador and Embassy staff tomorrow for a bilateral lunch and will seek a readout of their conversation. We are also contemplating our own conversation with Sok An, who is the RGC figure most closely linked to the ECCC. The next Friends of the ECCC meeting will be December 14. End Comment.
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